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BEFORE  
THE PUBLIC SERVICE COMMISSION OF  
SOUTH CAROLINA  
DOCKET NO. 92-275-C - ORDER NO. 92-956  
NOVEMBER 6, 1992

IN RE: Application of Enterprise Telcom Services, Inc. for a Certificate of Public Convenience and Necessity to Operate as an Interexchange Telecommunications Resale Carrier within the State of South Carolina.	)	ORDER
	)	APPROVING
	)	CERTIFICATE
	)	AND REQUIRING
	)	REFUNDS

This matter comes before the Public Service Commission of South Carolina (the Commission) by way of the Application of Enterprise Telcom Services, Inc. (Enterprise or the Company) requesting a Certificate of Public Convenience and Necessity authorizing it to operate as a reseller of telecommunications services in the State of South Carolina. Enterprise's Application was filed pursuant to S.C. Code Ann. §58-9-280 (Supp. 1991) and the Regulations of the Public Service Commission of South Carolina.

The Commission's Executive Director instructed Enterprise to publish a prepared Notice of Filing in newspapers of general circulation in the affected areas one time. The purpose of the Notice of Filing was to inform interested parties of Enterprise's Application and the manner and time in which to file the appropriate pleadings for participation in the proceeding. Enterprise complied with this instruction and provided the Commission with proof of publication of the Notice of Filing.

Petitions to Intervene were filed by Southern Bell Telephone and Telegraph Company (Southern Bell) and the South Carolina Department of Consumer Affairs (the Consumer Advocate).

A hearing was commenced September 22, 1992, at 11:00 a.m. in the Commission's Hearing Room. The Honorable Henry G. Yonce, Chairman, presided. Rachel J. Rothstein, Esquire, and Deborah Shupe, Esquire, represented Enterprise; Caroline Watson, Esquire, represented Southern Bell; Carl F. McIntosh, Esquire, represented the Consumer Advocate; and F. David Butler, Staff Counsel, represented the Commission Staff.

At the beginning of the hearing Southern Bell announced that it had entered into a Stipulation with Enterprise. Hearing Exhibit #1. The terms of the Stipulation are as follows:

- (1) Any grant of authority should clearly be for interLATA services only.
- (2) If any intraLATA calls are "inadvertently" completed by the carrier, the carrier should reimburse the LEC pursuant to the Commission's Order in PSC Docket No. 86-187-C. The definition of such inadvertent completion is as contained in such Order.
- (3) All operator services should be only for interLATA calls and any "0+" or "0-" intraLATA calls should be handed off to the LEC.
- (4) Nothing in 1, 2, or 3 above shall prohibit Enterprise Telcom Services, Inc., from offering any services authorized for resale by tariffs of facility based carriers approved by the Commission.

After introducing the Stipulation into evidence as Hearing Exhibit #1, Southern Bell withdrew from further participation in the proceeding.

Enterprise presented the testimony of Edward J. Conway, Jr. in support of its Application. Mr. Conway explained Enterprise's request for certification to operate as a reseller of interexchange telecommunications services in South Carolina. Mr. Conway explained that Enterprise wishes to resell the toll services of American Telephone and Telegraph Company (AT&T), and that Enterprise does not propose to provide intraLATA service. Mr. Conway stated that Cincinnati Bell will be responsible for billing. Mr. Conway outlined Enterprise's financial qualifications, background, and technical capabilities. According to its Application and the testimony, Enterprise will comply with all Rules and Regulations that the Commission may lawfully impose.

After full consideration of the applicable law and of the evidence presented by Enterprise, the Consumer Advocate, Southern Bell, and the Commission Staff, the Commission hereby issues its findings of fact and conclusions of law:

**FINDINGS OF FACT**

1. Enterprise is incorporated under the law of the State of Delaware, and is licensed to do business as a foreign corporation in the State of South Carolina by the Secretary of State.
2. Enterprise operates as a non-facilities based reseller of interexchange services and wishes to do so on an interLATA basis in South Carolina.
3. Enterprise has the experience, capability, and financial resources to provide the services as described in its Application.
4. Southern Bell and other local exchange carriers (LECs)

should be compensated for any unauthorized intraLATA calls completed through Enterprise's service arrangements.

5. Enterprise has done business intrastate and collected intrastate revenues prior to receipt of certification.

#### CONCLUSIONS OF LAW

1. Based on the above findings of fact, the Commission determines that a Certificate of Public Convenience and Necessity should be granted to Enterprise to provide intrastate, interLATA service through the resale of intrastate Wide Area Telecommunications Services (WATS), Message Telecommunications Services (MTS), Foreign Exchange Service, Private Line Service, or any other services authorized for resale by tariffs of carriers approved by the Commission.

2. The Commission adopts a rate design for Enterprise for its resale services which includes only maximum rate levels for each tariff charge. A rate structure incorporating maximum rate levels with the flexibility for adjustment below the maximum rate levels has been previously adopted by the Commission. In Re: Application of GTE Sprint Communications Corporation, etc., Order No. 84-622, issued in Docket No. 84-10-C (August 2, 1984). The Commission adopts Enterprise's proposed maximum rate tariffs.

3. Enterprise shall not adjust its rates below the approved maximum level without notice to the Commission and to the public. Enterprise shall file its proposed rate changes, publish its notice of such changes, and file affidavits of publication with the Commission two weeks prior to the effective date of the changes.

Any proposed increase in the maximum rate level reflected in the tariff which would be applicable to the general body of Enterprise's subscribers shall continue a general ratemaking proceeding and will be treated in accordance with the notice and hearing provisions of S.C. Code Ann. §58-9-540 (Supp. 1991).

4. Enterprise shall file its tariff and an accompanying price list to reflect the Commission's findings within thirty (30) days of the date of this Order.

5. Enterprise is subject to access charges pursuant to Commission Order No. 96-584, in which the Commission determined that for access purposes resellers should be treated similarly to facilities-based interexchange carriers.

6. With regard to Enterprise's resale of service, an end user should be able to access another interexchange carrier or operator service provider if they so desire.

7. Enterprise shall resell the services of only those interexchange carriers or LECs authorized to do business in South Carolina by this Commission. If Enterprise changes underlying carriers, it shall notify the Commission in writing.

8. All intrastate intraLATA calls must be completed over intraLATA WATS, MTS, private and foreign exchange lines or any other service of authorized intraLATA facilities based carriers approved for resale on an intraLATA basis. Any intraLATA calls not completed in this manner will be considered unauthorized traffic and the Company will be required to compensate the local exchange companies for the unauthorized calls it carries pursuant to

Commission Order No. 86-793 in Docket No. 86-187-C.

9. Enterprise shall file surveillance reports on a calendar or fiscal year basis with the Commission as required by Order No. 88-178 in Docket No. 87-483-C. The proper form for these reports is indicated on Attachment A.

10. At the close of the hearing, the attorney for the Consumer Advocate moved to require Enterprise to refund any intrastate revenues that it had collected prior to receipt of certification by this Commission. After consideration of this Motion, the Commission holds that it must be granted. (Enterprise has filed and served a late-filed exhibit containing a list of States in which ETS has obtained certification, a list of ETS' distributors in South Carolina and exhibits showing intrastate revenues of \$4996.09 earned by the Company prior to certification. These Exhibits, plus the accompanying letter, shall be marked for identification collectively as Hearing Exhibit No. 3, and shall be admitted into evidence.)

11. South Carolina Code Annotated Section 58-9-280 (1976), as amended, requires a telephone utility to obtain a Certificate of Public Convenience and Necessity from the Commission before operating within South Carolina. As a matter of public policy, the Commission concludes it has the discretionary authority to Order refunds in appropriate circumstances for service provided by a telephone utility prior to its obtaining a Certificate of Public Convenience and Necessity. The Commission finds and concludes that the circumstances surrounding Enterprise's provision of telephone

service on a intrastate basis prior to obtaining authority is an appropriate instance in which to require refunds.


12. It is clear from the record in this proceeding that Enterprise was aware of the statutory prohibition against providing telephone service without authority because it applied for a Certificate of Public Convenience and Necessity. Nonetheless, Enterprise willingly chose to provide telephone service and charge for that service prior to and during the pendency of its Application. Moreover, Enterprise's subscribers may not specifically have been harmed, but South Carolina's general body of telephone subscribers in South Carolina are potentially harmed by unregulated telephone utilities providing service. Whether a telephone utility is fit, willing, and able to provide telecommunications service in South Carolina is a paramount consideration in a certification proceeding. Intrastate service should not be provided by the utility until the Commission has passed on the matter because of the potential harm to the State's telephone subscribers, who may unwillingly subscribe to an uncertified carrier. The Commission therefore grants the Consumer Advocate's Motion and hereby orders Enterprise to refund all intrastate revenues collected prior to the receipt of certification.

13. Enterprise shall refund to its customers any charges collected for intrastate calls completed prior to the date of this Order. These refunds shall be issued within thirty (30) days of the date of this Order and shall include interest at the rate of

12% per annum. The Company shall file with the Commission all necessary information to certify that the refunds required by this Order have been made.

14. That this Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:

  
Chairman

ATTEST:

  
Executive Director

(SEAL)



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ATTACHMENT A

ANNUAL INFORMATION ON SOUTH CAROLINA OPERATIONS  
FOR INTEREXCHANGE COMPANIES AND AOS'S

(1) SOUTH CAROLINA OPERATING REVENUES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(2) SOUTH CAROLINA OPERATING EXPENSES FOR THE 12 MONTHS ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(3) RATE BASE INVESTMENT IN SOUTH CAROLINA OPERATIONS\* FOR 12  
MONTHS ENDING DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

\* THIS WOULD INCLUDE GROSS PLANT, ACCUMULATED DEPRECIATION,  
MATERIALS AND SUPPLIES, CASH WORKING CAPITAL, CONSTRUCTION  
WORK IN PROGRESS, ACCUMULATED DEFERRED INCOME TAX,  
CONTRIBUTIONS IN AID OF CONSTRUCTION AND CUSTOMER  
DEPOSITS.

(4) PARENT'S CAPITAL STRUCTURE\* AT DECEMBER 31 OR FISCAL YEAR  
ENDING \_\_\_\_\_.

\* THIS WOULD INCLUDE ALL LONG TERM DEBT (NOT THE CURRENT  
PORTION PAYABLE), PREFERRED STOCK AND COMMON EQUITY.

(5) PARENT'S EMBEDDED COST PERCENTAGE (%) FOR LONG TERM DEBT AND  
EMBEDDED COST PERCENTAGE (%) FOR PREFERRED STOCK AT YEAR ENDING  
DECEMBER 31 OR FISCAL YEAR ENDING \_\_\_\_\_.

(6) ALL DETAILS ON THE ALLOCATION METHOD USED TO DETERMINE THE  
AMOUNT OF EXPENSES ALLOCATED TO SOUTH CAROLINA OPERATIONS AS  
WELL AS METHOD OF ALLOCATION OF COMPANY'S RATE BASE INVESTMENT  
(SEE #3 ABOVE).